

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
EQUAL EMPLOYMENT OPPORTUNITY	: Civil Action No. 07-CV-8177
COMMISSION,	: (KMK) (GAY)
	:
Plaintiff,	: ECF CASE
v.	:
	:
PUTNAM STONE & MASON SUPPLY, INC.	:
	:
Defendants.	:
-----X	

CONSENT DECREE

This cause of action was initiated on or about September 19, 2007 by Plaintiff Equal Employment Opportunity Commission (EEOC), an agency of the United States Government. EEOC filed this action against Defendant Putnam Stone & Mason Supply, Inc. ("Putnam Stone") to compel Defendant to comply with a Settlement Agreement achieved through the EEOC's mediation process in resolution of a charge of sexual harassment, and to provide appropriate relief to Erika Stanczak (Stanczak), the Charging Party. EEOC alleged that Stanczak, Defendant, and EEOC entered into a Settlement Agreement through EEOC's mediation program on May 3, 2007, in settlement of Charge No. 520-2007-01173, filed by Stanczak against Defendant, and that Defendant breached the Settlement Agreement when it failed and refused to abide by the terms of the agreement.

Defendant Putnam Stone denies any wrongdoing or liability to the EEOC or Stanczak. The parties agree that it is in their mutual interest to fully resolve this matter without further litigation.

The parties stipulate and consent to the entry of this Consent Decree as final and binding between the parties and their successors or assigns.

The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court. The terms of this Decree represent the full and complete agreement of the parties.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWED:

General Provisions

1. This Decree resolves all of the issues raised by EEOC Charge No. 520-2007-01173 and the complaint and amended complaint filed by EEOC in this action in the United States District Court, Southern District of New York, Docket No.: 07-CV-8177 (KMK) (GAY). This Decree in no way effects EEOC's right to process any other pending or future charges that may be filed against Defendant and to commence civil actions on any such charges as EEOC sees fit.
2. The Court has jurisdiction of the subject matter of this action and over the parties, venue is proper, and all administrative prerequisites have been met.
3. No party will contest the validity of this Decree.
4. No party will contest the jurisdiction of the United States District Court to enforce this Decree and its terms, or the right of either party to bring an enforcement suit upon the breach of any of the terms of this Decree by the other party.
5. Breach of any term of this Decree by either party will be deemed a substantive breach. The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Decree and exercise good faith efforts to accomplish the terms and conditions of this Decree. EEOC and Defendant agree to attempt to confer regarding any dispute arising

from the implementation of this Decree, unless delay would result in harm to public interest. In the event the parties are unable to resolve this dispute, EEOC will determine whether Defendant has complied with the terms of this decree and is authorized to seek compliance with the Decree in the United States District Court, which will retain jurisdiction to enforce this Decree.

6. Defendant and its managers, officers, agents, parent organization, successors and assigns are enjoined from discriminating against any individual because of the individual's sex and from harassing any individual because of the individual's sex.

7. Defendant and its managers, officers, agents, successors and assigns are enjoined from retaliating against any individual for asserting her or his rights under Title VII, including from retaliating against any individual who files or has filed a charge, gives or has given testimony or given assistance with the investigation or litigation of these charges or action, or asserts or has asserted her rights under Title VII. Defendant and its managers, officers, agents, successors and assigns are enjoined from retaliating against any individual who engages in or has engaged in protected activity under Title VII and from retaliating against Charging Party.

Written Policies and Procedures

8. Within 30 days of the entry of this Decree, Defendant will implement and maintain the written policies and procedures prohibiting employment discrimination, including sex discrimination, sex harassment and retaliation, attached as Appendix A.

9. Within 30 days of the entry of this Decree, Defendant will distribute a copy of the written policies and procedures described in paragraph 8 above to all of its employees, and will thereafter, during the duration of this Decree, distribute a copy of the written policies and procedures to all new employees at the time such individuals start their employment with Defendant.

Notice and Posting

10. Within 20 days of the entry of this Decree, Defendant will display and maintain the EEOC poster in its facility in a place visually accessible to applicants and employees of the Defendant.

11. Within 20 days of the entry of this Decree, Defendant will display and maintain in its facility, in a place visually accessible to applicants and employees of the Defendant, a copy of the non-discrimination policy described in paragraph 8.

12. Within 20 days of the entry of this Decree, Defendant will display and maintain in each of its facilities, in a place visually accessible to applicants and employees of the Defendant, a remedial Notice pursuant to this Decree, a copy of which is attached as Appendix B, printed on EEOC letterhead.

Anti-Discrimination Training

14. Within 60 days from the entry of this Decree, and annually thereafter for the duration of this Decree, Defendant will provide all of its employees with no fewer than two hours of training in federal laws prohibiting discrimination in employment.

- a. The anti-discrimination training will be conducted by Fox Rothschild LLC.
- b. The content of the anti-discrimination training is set forth in Appendix C.
- c. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within 20 days of each training session, Defendant will provide to EEOC a copy of the attendance records from the training session.

15. Within 60 days from the entry of this Decree, Defendant will provide no fewer than three additional hours of training in federal laws prohibiting discrimination for all

management and supervisory employees of Defendant. During the second and third years of the Decree, Defendant will provide no fewer than two (2) hours of training in federal laws prohibiting discrimination for all management and supervisory employees of Defendant.

- a. The anti-discrimination training will be conducted by Fox Rothschild LLP.
- b. The content of the anti-discrimination training is set forth in Appendix D.
- c. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within 20 days of each training session, Defendant will provide to EEOC a copy of the attendance records from the training session.

Monetary Relief

17. In resolution of this matter, Defendant has paid \$45,000 in damages to Charging Party. The damages were paid for compensatory damages (\$30,000) and Charging Party's private attorney fees (\$15,000).

Additional Monitoring Provisions

18. For the duration of this Decree, Defendant will maintain records of all written or oral complaints of sex discrimination, sexual harassment or retaliation regarding any of its employees. For the duration of this Decree, Defendant will annually provide EEOC with a written report regarding any written or oral complaints of sex discrimination, sexual harassment or retaliation containing, a summary of each complaint, and for each such complaint: the name of the complaining party or party who was allegedly subjected to sex discrimination or retaliation, the name of the person(s) who allegedly engaged in such discriminatory or retaliatory conduct, the results of any investigation of the complaint or allegation, and any remedial action

taken by Defendant . If no such Complaints were made, Defendant will indicate such in its written report. A final report will be sent to EEOC 30 days before the date of the expiration of this Decree.

19. In addition to the monitoring provisions set forth elsewhere in this Decree, EEOC may monitor compliance during the duration of this Decree by unannounced inspection of Defendant's premises, records, and interviews with employees pertaining to this Decree at reasonable times. Defendant is permitted to designate a representative, including but not limited to outside counsel, who shall be permitted to attend any interviews of officers conducted by the EEOC.

20. All materials required by this Decree to be sent to EEOC shall be addressed to:

Monique J. Roberts, Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office
33 Whitehall St., 5th Floor
New York, NY 10004-2112

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Duration of Decree

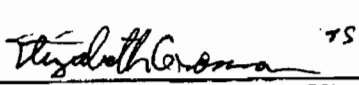
21. This Decree will remain in effect for three years from the date of entry. The Decree will not expire while any enforcement action concerning the Decree is pending. The Court retains jurisdiction over this action during the duration of the Decree. Upon entry of the Decree, the matter will be immediately ~~administratively closed but will not be dismissed during the duration of the Decree.~~ ^{the Court will retain jurisdiction} ~~Within 30 days after the date set for the expiration of the Decree, the parties will submit a stipulation of dismissal to the Court or a notice that the Decree has not expired because an enforcement action is pending.~~ ^{to enforce this Decree.}

✓
✓ **SO ORDERED, ADJUDGED AND DECREED this** 27th **day of**
January,
2008.


HON. 
U.S. District Court Judge


APPROVED IN FORM AND CONTENT:

**FOR THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

 TS
Elizabeth Grossman (EG-2478)
Regional Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
Phone: 212-336-3705
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elizabeth.grossman@eeoc.gov

**FOR DEFENDANT PUTNAM STONE
& MASON SUPPLY, INC.**


Donia Sawwan (DS-9338)
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100 Park Avenue, Suite 1500
New York, New York 10017
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Fax: (212) 692-0940
dsawwan@foxrothschild.com


William Oring
President, PUTNAM STONE &
MASON SUPPLY, INC.

APPENDIX A

Welcome to Putnam Stone & Mason Supply, Inc. ("Putnam" or "the Company"). We are happy that you are with us and hope you find your experience with us to be rewarding. We have always stressed that outstanding people, unified in a group, are the key to our success. In order to continue our consistent success and growth, and maintain an enjoyable work environment, it is important that all employees understand the Company's attached Equal Employment Opportunity Policy and Policy Against Workplace Harassment and Unlawful Practices. Putnam is committed to providing and maintaining a work environment that free from discrimination and harassment, and will not condone or tolerate any behavior which is in violation of these policies. It is important that you review and familiarize yourself with these policies, and maintain a copy of these policies for your records.

We welcome you and look forward to a growing relationship and future success with you. If you have any questions regarding the attached policies, please contact any Supervisor or Manager. We wish you every success with your career at Putnam.

William Dring

President

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Putnam Stone & Mason Supply, Inc. ("Putnam" or "the Company") is an equal opportunity employer and maintains a policy of non-discrimination toward all employees and applicants for employment. The policy of Putnam is that all employees will be treated equally without regard to race, color, religion, national origin, ancestry, sex, age, marital status, disability that can be reasonably accommodated without undue hardship, sexual orientation or any other characteristic protected by state or federal law.

All decisions made with respect to recruiting, hiring, and promotion will be based solely on individual qualifications related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, reduction-in-force, demotion, layoffs, termination, recall, and selection for all training, education, and Putnam sponsored social/recreation programs will be administered free from any discriminatory practices.

Putnam is dedicated to ensuring equal employment opportunities in all phases of Putnam's operations. Any alleged violations of this policy should be immediately reported to any Manager or Supervisor.

POLICY AGAINST WORKPLACE HARASSMENT AND UNLAWFUL PRACTICES

A. General

Putnam is committed to providing and maintaining a work environment that is free of discrimination and harassment (sexual or otherwise) or intimidation of any employee or job applicant, male or female on the basis of any protected classification. Putnam does not accept, condone or tolerate actions of harassment by any employee, client, vendor, member of the public or any other person associated with Putnam on the basis of any personal characteristic, including, but not limited to sex, race, age, national origin, sexual orientation, color, marital status, disability or religion, or any other classification protected by federal, state or local law.

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment that is based on race, color, sex, religion, national origin, disability, and/or age is unlawful.

B. Sexual Harassment

One type of illegal harassment is sexual harassment. Sexual harassment is unwelcome, unsolicited conduct of a sexual nature or because of one's sex, which an employee regards as undesirable or offensive. It includes unwelcome sexual advances, requests for sexual favors and any other conduct of a physical, verbal or non-verbal nature (including degrading comments emails, offensive pranks or sexually suggestive pictures) where:

- submission to such conduct is made either an explicit or implicit condition or term of employment; or
- submission to and/or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual in question; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Behaviors that constitute sexual harassment include but are not limited to:

- Generalized gender-based remarks and comments;
- Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;
- Verbal or written sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, invitations, gestures or inappropriate comments about a person;
- Visual contact, such as leering or staring at another's body, gesturing displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals;
- Explicit or implicit suggestions of sex by a Supervisor or Manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
- Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluations or promotional opportunity; or
- Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

Please note, the prohibition against sexual harassment applies equally to male and female employees and includes harassment where the harasser and the victim are of the same sex. In addition, any of the above behaviors ARE EQUALLY PROHIBITED AND NOT PERMISSIBLE WHERE THE CONDUCT OCCURS, BECAUSE OF AN EMPLOYEE'S OTHER PROTECTED CHARACTERISTIC (I.E., RACE, COLOR, AGE, RELIGION, NATIONAL ORIGIN, DISABILITY, ETC.).

All employees must comply with this policy and take appropriate measures to ensure that such conduct does not occur. Violations of this policy may result in disciplinary action up to and including termination.

C. Reporting

To fully protect employee rights, Putnam has established a procedure specifically designed to allow investigation and resolution of harassment claims. Employees who believe that they have been subjected to harassment, or who witness others being subjected to such harassment are urged to promptly report their concerns either to any Manager or Supervisor or the Manager in charge of the department or operations. No retaliatory measures will be taken against any employee who complains of harassment or otherwise makes a complaint. Under no circumstances need an employee report the harassment to a person whom he or she is accusing of inappropriate behavior.

D. Complaint/Resolution Procedures

1. General

The purpose of this policy is to provide a timely and orderly process for the resolution of employee complaints. Putnam intends that, wherever feasible, complaints shall be resolved at the lowest possible administrative level. No reprisals or retaliation of any kind shall be taken against an employee for bringing a complaint.

2. Investigation

All allegations of harassment shall be promptly investigated. The investigation will be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. Investigations will be conducted in a prompt, thorough and impartial manner by the appropriate Supervisor designated by the Company.

3. Confidentiality

All employee complaints and investigations will be treated confidentially to the maximum extent possible, in a manner that will protect the privacy interests of those involved. However, investigation of such complaints will generally require disclosure to the accused individual and to other witnesses in order to gather pertinent facts. It therefore may be necessary to disclose information to persons with a legitimate need to know about the matter.

4. Disciplinary Action

Where harassment is found to have occurred, Putnam will take prompt and effective remedial action to stop the harassment and deter its reoccurrence. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment. Putnam shall maintain a written record of the harassment complaints received. Written records will be maintained as confidential records to the extent practicable and appropriate.

E. Prohibition Against Retaliation

Retaliation against any employee who alleges that she/he was the victim of harassment or against any employee who provides information in the course of an investigation into claims of unlawful harassment in the workplace is prohibited by this policy. Any employee who files a complaint, provides information for an investigation or testifies in any proceeding under this policy will not be subjected to adverse employment consequences based upon such involvement or be the subject of retaliation.

The harassment policy applies to actions by employees against other employees, as well as to actions by or between clients or vendors and employees.

Putnam has developed this policy to ensure that all of its employees work in an environment free from unlawful harassment. Putnam will make every effort to ensure that all of its personnel are familiar with the policy and know that any complaint received will be promptly and appropriately investigated.

APPENDIX B

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office**

23 Whitehall Street, 5th Floor
New York, NY 10004-2112
New York Status Line: (866) 408-8075
New York Direct Dial: (212) 336-3630
TTY (212) 336-3622
FAX (212) 336-3625

NOTICE TO EMPLOYEES OF PUTNAM STONE & MASON SUPPLY, INC.

This Notice is posted as part of a Consent Decree between the U.S. Equal Employment Opportunity Commission (EEOC) and Putnam Stone & Mason Supply, Inc. to fully resolve a lawsuit brought by EEOC, EEOC v. Putnam Stone & Mason Supply, Inc., in the United States District Court for the Southern District of New York, Civil Action No. 07-CV-8177 (KMK). The lawsuit sought to require Putnam Stone & Mason Supply, Inc. (Putnam Stone) to comply with a Settlement Agreement that had been reached through EEOC's mediation process to resolve a charge of discrimination. The lawsuit asked for monetary damages to be paid to the person who filed the charge of discrimination with EEOC.

Federal law prohibits discrimination and/or harassment based on an employee's sex, race, color, national origin, religion, age or disability status. Federal law also prohibits retaliation against any employee who files a charge of discrimination, who opposes unlawful activity, or who cooperates in the investigation of a charge or otherwise exercises her or his rights under the law. Parties who enter into Settlement Agreements through EEOC's mediation process are required to comply with the terms of the Settlement Agreement.

Putnam Stone will adhere to federal laws regarding discrimination that prohibit discriminating against and harassing any individual because of the individual's sex. Putnam Stone will not retaliate against any person who exercises his or her rights under federal anti-discrimination laws.

Putnam Stone will implement and distribute written policies and procedures prohibiting sex discrimination, sex harassment and retaliation, including complaint procedures and procedures for investigation and resolution of reported allegations of or suspected incidents of sex discrimination, sexual harassment and retaliation. Putnam Stone will post this Notice and the federal poster on laws prohibiting employment discrimination.

Putnam Stone will provide training on federal laws prohibiting employment discrimination to all current and future employees, managers and supervisors and provide additional training to its management and officers about EEOC's mediation program and the obligations of parties to comply with EEOC mediation Settlement Agreements. Putnam Stone will allow monitoring by EEOC regarding Putnam Stone's compliance with the Consent Decree.

Should you have a complaint of discrimination or harassment you may contact:

U.S. Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street
New York, NY 10002
Phone: (212) 336-3630
TTY: (212) 336-3622
Website: www.eeoc.gov

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE ALTERED, DEFACED BY ANYONE OR COVERED BY ANY OTHER MATERIALS. IT MUST REMAIN POSTED UNTIL _____.

APPENDIX C

DIVERSITY PROGRAM
Putnam Stone & Mason Supply, Inc.
Employees

2008



Presented By:

Fox Rothschild LLP

Anne Ciesla Bancroft, Esq.

California • Delaware • Florida • Nevada • New Jersey • New York • Pennsylvania

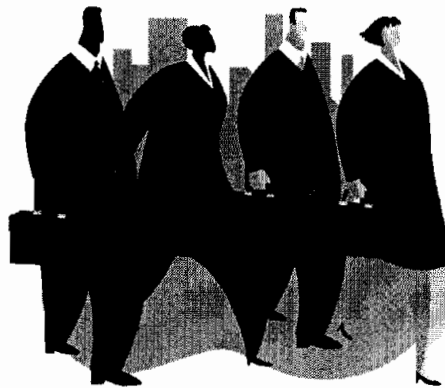
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Do You Know These People?

- 1. Chris stays at home with the kids and drives a mini-van.**
- 2. Mark finished the New York Marathon.**
- 3. Pat is a supervisor.**
- 4. Donna is a freshman at Howard University.**
- 5. Ruby takes public transportation to work.**

Objectives of the Diversity Program

- Understand the benefits and challenges of a diverse workplace.
- Understand rights and responsibilities under the law and the Company's policies.



What does the law require?

1. Federal, state or local law may apply.
 - Title VII of the Civil Rights Act of 1964
 - The Age Discrimination in Employment Act
 - The Americans with Disabilities Act
 - The Pregnancy Discrimination Act
 - The Equal Pay Act
 - State or local law
2. It is against the law to discriminate against employees based upon protected activities.
 - filing a workers' compensation claim
 - serving jury duty
 - "whistle blowing" or complaining about illegal activity
 - "concerted" activity
 - filing a complaint of harassment or discrimination
 - taking a protected leave
3. It is against the law to discriminate against employees based on membership in a "protected classification." These classifications can include:
 - Race/Color
 - Religion
 - Sex/Pregnancy
 - National Origin
 - Ancestry
 - Disability/Handicap
 - Age
 - Sexual Orientation or Preference
 - Marital or Familial Status
 - Domestic Partnership Status
 - Veteran Status
 - Other Protected Classifications
4. It is against the law to discriminate against employees in order to prevent vesting or obtaining benefits.
 - leave benefits
 - health care benefits
 - pension benefits

- bonuses/commissions

5. It is against the law to retaliate against or intimidate an employee for:

- pursuing rights
- complaining about discrimination, unfair treatment or harassment
- participating in an investigation or proceeding

Discrimination - A Closer Look

Age Discrimination

1. It is against federal law to discriminate against a person 40 years of age or older, and against the law in some states to discriminate against a person on the basis of any age, whether older or younger.



Disability and Handicap Discrimination

1. It is against the law to discriminate against a qualified person with a disability or handicap. Under federal law, an individual with a disability is someone who has a physical or mental impairment that substantially limits one or more of such person's major life activities; has a record of such an impairment; or is regarded as having such an impairment.

2. Employers must attempt to reasonably accommodate the known disability of an employee to allow for fulfillment of essential job functions without causing undue hardship. Examples of reasonable accommodation include: readily accessible facilities; job restructuring; reassignment; readers, interpreters, and other helpers or aids.

Gender/Sex and Pregnancy

1. It is against the law to discriminate on the basis of gender or pregnancy.

2. Federal law does not prohibit discrimination on the basis of sexual orientation or gender identity, but many state and/or local laws do.

Race and National Origin Discrimination

1. It is against the law to discriminate on the basis of race or color; on the basis of a person's place of origin or ancestors' place of origin; or, on an

individual's physical, cultural or linguistic characteristics known to be specific to a national origin group.

Religious Discrimination

1. It is against the law to discriminate against employees based on religious beliefs. Employers must accommodate the religious observances of their employees and prospective employees provided they do not exact more than minimal expense and/or inconvenience.

Retaliation

1. It is against the law to retaliate against or intimidate an employee for pursuing rights for him/herself or others or participating in an investigation.

2. Retaliation may involve any negative treatment against an employee with regard to any term, condition, or benefit of employment.

3. Retaliation claims can arise where an individual is ostracized, isolated, or teased for complaining.

Harassment – A Closer Look

Overview

1. It is against the law to engage in unwelcome, unsolicited conduct which is either of a sexual nature or based on a protected classification.
2. Two types of unlawful harassment:
 - Tangible employment action: Where harassment by a supervisor results in some tangible employment action, such as termination or demotion.
 - Hostile Work Environment: Where the conduct has the purpose or effect of unreasonably interfering with the employee's performance, or creates an intimidating, hostile or offensive working environment.
3. Unlawful harassment is not limited to "sexual" harassment – it is against the law to engage in harassment based on race, disability, age, religion, national origin, color or any other protected category.
4. Not all "harassment" is unlawful if it is not based on a protected class.
5. Consensual relationships at work can create harassment.

Examples

- Inappropriate photos/e-mails;
- Explicit, racial, or other "off color jokes";
- Demeaning or overly familiar remarks;
- Repeated requests for dates;
- Repeated comments regarding personal appearance;
- Neck rubs, hugging and other physical contact;
- Conditioning a benefit on sexual conduct, such as dating.



Unwelcome, Severe or Pervasive

- Conduct must be unwelcome to the reasonable victim
- Conduct must be severe or pervasive

“Did you hear the
joke about....”



“I wonder if she knows my wife
is...”

“Hey, that’s a good one!”

“Her jokes are so offensive, but
she is the boss.”

“I wonder if I could report this?”

Who can commit unlawful harassment?

- Supervisors and leaders
- Co-workers
- Vendors and clients
- Men or women

Hypotheticals

1. It's Dawn's birthday. Her co-workers buy her a cake and gather in the conference room to sing "Happy Birthday" and enjoy the cake together. After everyone has left the room, her boss approaches her and gives her a birthday hug and kiss on the cheek. She smiles and says thank you, but feels uneasy about the whole situation after he leaves the conference room. What should she do?

2. Chris is often asked to contact the telephone company to arrange for the repair of the Company's telephone lines. Benny is the technician who usually responds. Whenever Benny arrives, he stands near Chris's workstation and comments on Chris's appearance. Recently, Benny asked Lyle, Chris's supervisor, for Chris's home telephone number, explaining that he has often approached Chris at work for a date, but Chris has rejected him, and Benny believes he will do better if he calls Chris at home. What should Lyle do?

3. Harry is a supervisor who supervises several employees. He has a reputation for holding his supervisees to high standards and can be somewhat overbearing. Ryan is a new employee who works for Harry. During his second week, Harry says to Ryan: "Where is the \$#@%& paperwork? The client needs it today and you'd be a damn idiot if you didn't realize that." This type of treatment and language continues on a weekly basis for the next several months. Has Harry harassed Ryan?

4. Juan, Anthony and Muhammed drive a delivery truck together. They regularly joke with each other – usually about their national origin or heritage. Anthony and Muhammed joke to Juan about Hispanic stereotypes, Muhammed and Juan joke to Anthony about Italian stereotypes, and Juan and Anthony joke to Muhammed about the Islamic religion. Because all three of the employees joke to each other, and seem to laugh at all of the jokes, should the Company do anything in response to the conduct?

5. Jill, a co-worker, has filed a harassment claim against the company in federal court, naming John, one of your friends and your supervisor, as the harasser. Jill claims that John started harassing her after she requested an accommodation of her disability. You tell several other co-worker about Jill's complaint, and also express your opinion that Jill filed the complaint to get back at John because she wasn't satisfied with her raise. Employees in the department have stopped speaking to Jill since she brought the complaint and no one invites her to lunch anymore. Is any of this conduct retaliatory?

6. The sales are mostly in their 20s. Carol recently joined the sales staff. She is a 48 year old, single mother of 3 children. Her co-workers are friendly, and affectionately call her "Mom," but do not invite her to lunch or out after work. Jeff, who is 29, is asked to choose employees to work on a new account that will

require some travel. He doesn't pick Carol because he assumes she can't travel because of her childcare responsibilities. He does choose Debbie, who he started dating on the cruise. Has Carol been unlawfully harassed or discriminated against?

7. Jack supervises the night shift. He jokes around with the male employees on his staff, but is often dismissive of the women. He generally does not send the women out on repair calls because he is concerned about their safety; however only employees who are out on calls have the potential to work overtime. Could Jack's behavior constitute discrimination?

8. Two of your co-workers are discussing a news article regarding the recognition of civil unions for same sex couples. One of the employees expresses his disapproval. You know the employee in the cubicle next to you is in a same sex relationship. Should you do anything? Could the conversation constitute harassment?

9. Sally has been employed by the company for two months when she starts to experience complications due to her pregnancy that will require a one month leave of absence. Her company does not allow absences during the first three months of employment. In fact, last year a new male employee was terminated after he had a heart attack and could not report to work. Does the company need to grant Sally's request?

10. A group of employees is at a bar after work having drinks. One of the employees becomes intoxicated. He later refers to another patron at the bar with a derogatory racial term. When one of the other employees objects, he punches him. What should the company do when it finds out about the incident?

What Would You Do?

1. A co-employee calls you “stupid.”
2. Your co-worker frequently asks you questions about your religious beliefs and traditions.
3. Your supervisor looks you up and down when you speak with him.
4. You are putting together a company basketball team.
5. Your co-worker is going through chemotherapy and needs several breaks a day. When he’s on break, you have to answer his calls.
6. You have eye surgery that affects your ability to see the computer screen.
7. A client frequently sends you emails with sexual jokes or inappropriate photos.
8. Your manager invites you to go out to a bar to talk about your promotion.
9. Your coworker tells you he objects to your living with your significant other based on his religion.
10. Your co-worker leans over you to look at your computer screen and frequently touches you when you are speaking with her.

Diverse or Discriminatory?

1. "You're faster than employees who are half your age!"
2. "American workers are losing their jobs to the Indians."
3. "Anne's not going to come back from maternity leave because she's going to want to stay home with the baby."
4. "Bob can't work overtime because he's a single parent."
5. "Jeff can't use the computer – they didn't even have computers when he was in college."
6. "Don't give Gail the assignment – remember she was in rehab last year? She may be absent too much to handle the job."
7. "You should promote Bill. Lisa's husband is a doctor and she doesn't need the money."
8. "You better not send Henry on that sales call. The customer won't be able to understand his accent."
9. "You're pretty aggressive for a woman."
10. "We are looking for a young sales force that we can train to do things our way."

Policy Review

Questions and Notes

**THESE MATERIALS ARE PROVIDED AS A SUMMARY ONLY, AND
SHOULD NOT BE USED AS A SUBSTITUTE FOR LEGAL ADVICE.**

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that I participated in the Putnam Stone & Mason Supply, Inc. Diversity Program for Employees on the date below.

I also acknowledge that I understand the Company's policy against discrimination and harassment, which includes a detailed Complaint procedure, and intend to abide by it.

I understand that I must not engage in any behavior that could be considered harassment or discrimination; that all employees have the right to work in an environment that is free from all forms of harassment and discrimination; I understand that if I witness harassment or discrimination or feel that I am being harassed or discriminated against, I have the right to tell the harasser to stop, and have the right to submit a complaint to the designated contact, as listed in the Company Complaint Procedure.

EMPLOYEE NAME (PRINT)

EMPLOYEE SIGNATURE

DATE

APPENDIX D

DIVERSITY PROGRAM
Putnam Stone & Mason Supply Inc.
Management

2008



Presented By:

Fox Rothschild LLP

Anne Ciesla Bancroft, Esq.

California • Delaware • Florida • Nevada • New Jersey • New York • Pennsylvania

NY1 101588v1 01/23/08

Do You Know These People?

- 1. Chris stays at home with the kids and drives a mini-van.**
- 2. Mark finished the New York Marathon.**
- 3. Pat is a supervisor.**
- 4. Donna is a freshman at Howard University.**
- 5. Ruby takes public transportation to work.**

Objectives of the Diversity Program

- Understand the benefits and challenges of a diverse workplace.
- Understand rights and responsibilities under the law and the Company's policies.
- *Managers, supervisors and human resources representatives have a responsibility to respond to harassment and discrimination.*

What does the law require?

1. Federal, state or local law may apply.
 - Title VII of the Civil Rights Act of 1964
 - The Age Discrimination in Employment Act
 - The Americans with Disabilities Act
 - The Pregnancy Discrimination Act
 - The Equal Pay Act
 - State or local law
2. It is against the law to discriminate against employees based upon protected activities.
 - filing a workers' compensation claim
 - serving jury duty
 - "whistle blowing" or complaining about illegal activity
 - "concerted" activity
 - filing a complaint of harassment or discrimination
 - taking a protected leave
3. It is against the law to discriminate against employees based on membership in a "protected classification." These classifications can include:
 - Race/Color
 - Religion
 - Sex/Pregnancy
 - National Origin
 - Ancestry
 - Disability/Handicap
 - Age
 - Sexual Orientation or Preference
 - Marital or Familial Status
 - Domestic Partnership
 - Veteran Status
 - Other Protected Classifications
4. It is against the law to discriminate against employees in order to prevent vesting or obtaining benefits.
 - leave benefits
 - health care benefits
 - pension benefits

- bonuses/commissions

5. It is against the law to retaliate against or intimidate an employee for:

- pursuing rights
- complaining about discrimination, unfair treatment or harassment
- participating in an investigation or proceeding

Types of Discrimination

1. Disparate Treatment: An individual is treated differently because of his/her protected status.
 - A manager tells a black applicant that a job is filled, yet one hour later interviews a white applicant.
 - A manager refuses to promote women because of a desire to reward male breadwinners.
2. Disparate Impact: An employer implements a practice or policy which adversely impacts a protected group.
 - A job requirement that all employees have a valid driver's license.
 - A requirement that all applicants have good credit.
3. Mixed Motive: One of the factors for the employer's action is discriminatory, even though other lawful factors also motivated the action.
 - Over the past several months, the Company has received complaints about Jerry, a long term file clerk. Most complaints say that he is incompetent which is supported by the high percentage of documents he erroneously filed. Jerry's supervisor sat down with him on two occasions to discuss the performance problem. During the first session, the supervisor told Jerry his performance was unacceptable and that he would have to be more efficient. During the second session, Jerry's supervisor told him he was getting too old to do the job and should think about retiring. The employer's motive could either be to terminate Jerry because of age or to terminate him because of poor performance.

Discrimination - A Closer Look

Age Discrimination

1. It is against federal law to discriminate against a person 40 years of age or older, and against the law in some states to discriminate against a person on the basis of any age, whether older or younger.



Disability and Handicap Discrimination

1. It is against the law to discriminate against a qualified person with a disability or handicap. Under federal law, an individual with a disability is someone who has a physical or mental impairment that substantially limits one or more of such person's major life activities; has a record of such an impairment; or is regarded as having such an impairment.

2. Employers must attempt to reasonably accommodate the known disability of an employee to allow for fulfillment of essential job functions without causing undue hardship. Examples of reasonable accommodation include: readily accessible facilities; job restructuring; reassignment; readers, interpreters, and other helpers or aids.

Gender/Sex and Pregnancy

1. It is against the law to discriminate on the basis of gender or pregnancy.

2. Federal law does not prohibit discrimination on the basis of sexual orientation or gender identity, but many state and/or local laws do.

Race and National Origin Discrimination

1. It is against the law to discriminate on the basis of race or color; on the basis of a person's place of origin or ancestors' place of origin; or, on an

individual's physical, cultural or linguistic characteristics known to be specific to a national origin group.

Religious Discrimination

1. It is against the law to discriminate against employees based on religious beliefs. Employers must accommodate the religious observances of their employees and prospective employees provided they do not exact more than minimal expense and/or inconvenience.

Retaliation

1. It is against the law to retaliate against or intimidate an employee for pursuing rights for him/herself or others or participating in an investigation.

2. Retaliation may involve any negative treatment against an employee with regard to any term, condition, or benefit of employment.

3. Retaliation claims can arise where an individual is ostracized, isolated, or teased for complaining.

Harassment – A Closer Look

Overview

1. It is against the law to engage in unwelcome, unsolicited conduct which is either of a sexual nature or based on a protected classification.
2. Two types of unlawful harassment:
 - Tangible employment action: Where harassment by a supervisor results in some tangible employment action, such as termination or demotion.
 - Hostile Work Environment: Where the conduct has the purpose or effect of unreasonably interfering with the employee's performance, or creates an intimidating, hostile or offensive working environment.
3. Unlawful harassment is not limited to "sexual" harassment – it is against the law to engage in harassment based on race, disability, age, religion, national origin, color or any other protected category.
4. Not all "harassment" is unlawful if it is not based on a protected class.
5. Consensual relationships at work can create harassment.

Examples

- Inappropriate photos/e-mails;
- Explicit, racial, or other "off color jokes";
- Demeaning or overly familiar remarks;
- Repeated requests for dates;
- Repeated comments regarding personal appearance;
- Neck rubs, hugging and other physical contact;
- Conditioning a benefit on sexual conduct, such as dating.



Unwelcome, Severe or Pervasive

- Conduct must be unwelcome to the reasonable victim
- Conduct must be severe or pervasive

“Did you hear the
joke about....”



“I wonder if she knows my wife
is...”

“Hey, that’s a good one!”

“Her jokes are so offensive, but
she is the boss.”

“I wonder if I could report this?”

Who can commit unlawful harassment?

- Supervisors and leaders
- Co-workers
- Vendors and clients
- Men or women

Types of Illegal Conduct



Every aspect of the employment relationship is covered:

- failing or refusing to hire employees
- poor evaluations
- promotion denials
- favoritism
- disciplining or discharging employees
- denial of benefits/terms or conditions of employment
- limiting, segregating or classifying an applicant or employee in a way that deprives him/her of employment opportunities
- harassment
- retaliation

Warning Signs of Discrimination

- Complaints of favoritism
- Complaints of unfair treatment
- Complaints of offensive conduct
- Complaints of retaliation

Evidence of Discrimination

- Departure from past practice
- Lack of documentation
- Failure to provide progressive discipline

How to respond to a complaint of harassment

- Respond to complaints of harassment as soon as possible, even if an employee asks you to wait.
- Keep the matter confidential and require other employees to do so except employee can talk to others and talk to EEOC.

Investigation

- Interviews of the complainant, the accused and any witnesses.
- Prompt, remedial action where appropriate.
- Discipline can include, but is not limited to, a written warning, a transfer, suspension, financial penalty, counseling or termination of employment.

Liability

- Tangible employment action: An employer is strictly liable for a supervisor's harassment of a supervisee which results in tangible employment action.
- Hostile work environment: An employer can assert an affirmative defense to a claim of hostile work environment harassment if it exercised reasonable care to prevent and correct promptly any sexually harassing behavior and the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer to avoid harm. However, this does not apply to high-ranking officials who are alter-egos of the Company.
- Damages: back pay, front pay, compensatory and punitive damages
- Individual

Interviewing

1. What You Need to Know for Effective Interviewing and Hiring

- What are the essential functions of the position?
- What are the required technical qualifications?
- What are the required behavioral qualifications?
- What are the “preferred” qualifications?
- Where are you looking for/getting candidates?

2. Do You Know How to Interview

- Are you being an ambassador of the Company?
- Are you gathering the important information that you need about the candidate?
- Are you asking the “right” kind of questions?
- Are you providing the candidate with a realistic description of the available position, both good and bad, and in non-discriminatory terms?
- Are you creating binding obligations on behalf of the Company?

3. Job descriptions

4. Testing

5. Documentation

6. Do's and Don'ts

- Do use inquiries and selection criteria that are job-related and consistent with business necessity
- Don't ask questions which could elicit candidates' membership in a protected group
- Don't ask open questions about candidates' out-of-work activities or personal background
- Don't ask any questions that would in any way request the applicant to reveal his/her age (e.g., date of birth, year graduated high school)
- Do describe the Company and the applicable position in appropriate non-discriminatory terms
- Do consider candidates who may be unlike ourselves (including those with disabilities which can be reasonably accommodated)

- Do check references and appropriately evaluate criminal convictions
- Don't promise candidates anything that is not within your authority to promise
- Don't promise candidates that you will keep their application on file for future consideration
- Do keep the hiring process consistent

Evaluations

1. Employees expect and deserve well-thought out evaluations.
2. Evaluations are not an annual event – supervisors should evaluate daily.
3. Identify behavioral and performance problems.
4. Utilize progressive discipline and action plans where appropriate.
5. Follow up!
6. Juries and discrimination agencies will draw adverse inferences without evaluations, particularly where an employer claims poor performance.
7. Certify no complaints of discrimination or harassment.
8. Employee must sign acknowledgement.
7. Do's and Don'ts
 - Do focus on job-related behaviors
 - Don't sugar-coat
 - Do set goals
 - Don't comment on an employee's membership in a protected class or personal characteristics not related to the job
 - Do specify the action to be taken if the employee fails to correct problems
 - Do meet face to face with the employee and have employee sign acknowledgement
 - Do use progressive discipline where appropriate
 - Do file the evaluation in the employee's personnel file

Hypotheticals

1. It's Dawn's birthday. Her co-workers buy her a cake and gather in the conference room to sing "Happy Birthday" and enjoy the cake together. After everyone has left the room, her boss approaches her and gives her a birthday hug and kiss on the cheek. She smiles and says thank you, but feels uneasy about the whole situation after he leaves the conference room. What should she do?

2. Juan, Anthony and Muhammed drive a delivery truck together. They regularly joke with each other – usually about their national origin or heritage. Anthony and Muhammed joke to Juan about Hispanic stereotypes, Muhammed and Juan joke to Anthony about Italian stereotypes, and Juan and Anthony joke to Muhammed about the Islamic religion. Because all three of the employees joke to each other, and seem to laugh at all of the jokes, should the Company do anything in response to the conduct?

3. Jack schedules employees for the three daily shifts, weekends, holidays, and overtime. Employees who work the last shift, holidays and weekends get a premium rate. Jack usually schedules men for the late shift because he is concerned about the safety of the female employees. He also offers the men the overtime opportunities first because he assumes the women on his staff won't be available because of childcare responsibilities. Is there any problem with Jack's assignments?

4. Jill, one of your former employees, has filed a harassment claim against the Company in federal court. Because the former employee's sister, Pam, works in the Company, you assume that all of your employees know about the claim. You have just been notified by your attorney that Pam has given a voluntary statement to Jill's attorney that supports Jill's harassment claim. Pam's performance has not been satisfactory for the past few months but you've been so distracted about Jill's lawsuit you haven't had time to talk with Pam. Pam has become unproductive, hostile and insubordinate since Jill was fired. You've received several employee comments regarding Pam's change in attitude. What can you do?

5. Prior to your monthly department meeting a group of employees are expressing their disapproval of civil unions and making disparaging comments about same sex couples. You walk in during the conversation. All of the employees in the room are laughing. Should you do anything?

6. Chris is often asked to contact the telephone company to arrange for the repair of the Hospital's telephone lines. Benny is the technician who usually responds. Whenever Benny arrives, he stands near Chris's workstation and comments on Chris's appearance. Recently, Benny asked Lyle, Chris's supervisor, for Chris's home telephone number, explaining that he has often

approached Chris at work for a date, but Chris has rejected him, and Benny believes he will do better if he calls Chris at home. What should Lyle do?

7. Harry is a supervisor who supervises several employees. He has a reputation for holding his supervisees to high standards and can be somewhat overbearing. Ryan is a new employee who works for Harry. During his second week, Harry says to Ryan: "Where is the \$#@%& paperwork? The customer needs it today and you'd be an idiot if you didn't realize that." This type of treatment and language continues on a weekly basis for the next several months. Has Harry harassed Ryan?

8. Following a business meeting, Liz attends dinner with Ted, a customer, and Brad, a co-worker. During the dinner, Ted and Brad have several drinks and begin to make lewd comments to Liz. Offended, Liz leaves the dinner early. The next morning, she complains to Jeff, their supervisor. Jeff brings Brad into the meeting and reminds both Liz and Brad that Ted is a very important client. He then suggests that Liz and Brad have a drink together and "work this out." A week later he asks Liz if the situation is resolved and she says "yes." Was Jeff's response appropriate?

9. The sales staff are mostly in their 20s. Carol recently joined the staff. She is a 48 year old, single mother of 3 children. Her co-workers are friendly, and affectionately call her "Mom," but do not invite her to lunch or out after work. Jeff, who is 29, is asked to choose employees to work on a new account that will require some travel. He doesn't pick Carol because he assumes she can't travel because of her childcare responsibilities. He does choose Debbie, who he started dating on the cruise. Has Carol been unlawfully harassed or discriminated against?

10. Jessica is a manager who is interviewing for a position that will require lifting. Jessica interviews the following candidates:

- Marsha: Based on her resume and application, Marsha has extensive relevant experience, but has several long gaps between jobs. When Marsha comes in for her interview, she is wearing a scarf and does not appear to have any hair. Jessica decides Marsha isn't right for the job, and doesn't ask about the gaps in employment which Jessica assumes have to do with Marsha's apparent medical condition.

- Susan: Susan appears to be pregnant, and looks younger than Jessica expected. Jessica decides not to hire her based on the physical demands of the job.

- Jack: Jack appears older than the other candidates, which Jessica confirms when she asks when Jack graduated from college. Jessica feels more comfortable with Jack after he answers her questions about his ability to lift.

- Mark: Jessica and Mark get along very well during the interview. Jessica asks Mark if he works out and they spend most of the interview talking about rock-climbing and going to the gym. As the interview ends, Jessica comments that Mark is an excellent candidate and suggests that they continue the interview over dinner that night. Mark agrees. Mark and Jessica commence a sexual relationship that ends a few weeks later, before Jessica fills the job.

- Lindsay: Jessica and Lindsay went to college together. When Jessica finds out Lindsay is looking for a job, she offers the position to her. Even though Lindsay does not have any relevant experience, Jessica knows she is in good shape and can easily handle the job.

Complaints of Discrimination

Overview

1. Employees can file administrative charges of discrimination with the federal Equal Employment Opportunity Commission (the "EEOC") or state or local agencies.

- If appropriate, the agency will investigate the charge.
- If requested to do so by the EEOC, the employer will be required to answer the charge and provide a statement of its position.
- Often the employer and complainant will participate in a fact-finding conference with the investigating agency.
- If the agency finds probable cause of discrimination, it can issue a right to sue letter, will attempt conciliation, or bring suit against the employer on the employee's behalf.

2. EEOC Mediation

- Voluntary process, free
- Universal Agreements to Mediate
- Mediation is a form of ADR offered by the EEOC as an alternative to the traditional investigative or litigation process
- informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge
- gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, and find a resolution
- mediation is conducted by a trained and experienced mediator
- mediator does not resolve the charge or impose a decision on the parties, but instead helps the parties to agree on a mutually acceptable resolution
- parties have right to have an attorney present
- mediation process is strictly confidential and information disclosed will not be revealed to anyone
- if mediation is unsuccessful, the charge is investigated like any other charge

Obligations of Parties to Comply with EEOC Mediation Settlement Agreement

- Agreement reached during mediation is enforceable in court just like any other settlement agreement resolving a charge filed with the EEOC
 - terms of Agreement are confidential and cannot be disclosed to any third party
 - Except that it may be enforced in court and used as evidence in a subsequent proceeding in which any party alleges a breach of the Agreement
 - Agreement does not constitute an admission by Respondent of any violation of the laws
 - EEOC is authorized to investigate compliance with the Agreement and to bring a legal action to enforce it
3. Employees can bring suit in federal or state court.
- Employees must file a charge with the EEOC before bringing suit in federal court for most claims of discrimination.
 - Employees in some states may bring suit in state court without filing an administrative charge first.
4. If an administrative charge or lawsuit is filed, employers may be required to produce:
- personnel files for the complainant, co-employees and managers
 - data on the composition of the workforce
 - documents pertaining to employment decisions, such as evaluations and warnings
 - internal memoranda
 - policies and procedures
 - emails
 - applications, resumes and hiring data
5. Employees, witnesses, and clients could be deposed or interviewed.

Hypothetical

You terminated Henry's employment. His "Personnel Action" form states that his termination was based on excessive absenteeism, but you also claim that it was based on poor performance. Henry has sued the Company claiming that he was terminated because he is Hispanic. Henry's attorney asks you the following questions during your deposition. How would you answer?

1. Why aren't any of the supervisors in your department Hispanic?
2. I see Henry got an excellent evaluation last year. Why did you give him such a good evaluation if you had problems with his performance?
3. Last year you allowed Mark, a White employee, to exceed his allowed absences because his child was hospitalized, and Cindy, a Black employee, to exceed her allowed absences to attend a wedding overseas. Have you ever allowed a Hispanic employee to exceed his allowed absences?
4. Did you know Henry was absent because his wife was very ill and he needed to take care of their new baby?
5. Did you ever tell Henry you weren't satisfied with his performance?
6. You've claimed that you received complaints from other employees about Henry's performance. Which employees? What were the complaints? Did you ever receive any in writing? Did you ever discuss the complaints with Henry?
7. Have you ever received complaints about any other employee?
8. What about Henry's performance was unsatisfactory?
9. You say in this email to another manager that other employees find it hard to communicate with Henry because of his Hispanic accent. What is the basis for that statement?
10. Following his hire, you made Henry take an English proficiency test. Did you require that of any other employees?
11. What employees were terminated last year?
12. Who replaced Henry?
13. If Henry's termination was based on poor performance, why isn't that reason given on his "Personnel Action" form?

Diverse or Discriminatory?

1. “You’re faster than employees who are half your age!”
2. “American workers are losing their jobs to the Indians.”
3. “Anne’s not going to come back from maternity leave because she’s going to want to stay home with the baby.”
4. “Bob can’t work overtime because he’s a single parent.”
5. “Jeff can’t use the computer – they didn’t even have computers when he was in college.”
6. “Don’t give Gail the assignment – remember she was in rehab last year? She may be absent too much to handle the job.”
7. “You should promote Bill. Lisa’s husband is a doctor and she doesn’t need the money.”
8. “You better not send Henry on that sales call. The customer won’t be able to understand his accent.”
9. “You’re pretty aggressive for a woman.”
10. “We are looking for a young sales force that we can train to do things our way.”

Policy Review

Consent Decree

1. Putnam Stone & Mason Inc. and the U.S. Equal Employment Opportunity Commission ("EEOC") are parties to a Consent Decree.

[INSERT]

LEGAL V. ILLEGAL PRE-EMPLOYMENT INQUIRIES

Subject	Lawful	Unlawful
Race/Color	None.	<p><i>Are you Hispanic or White?</i></p> <p><i>Any socio-economic questions for which minority groups may be disadvantaged (i.e., Do you own or rent your home? own a car?).</i></p>
National Origin	<p>Are you authorized to work in the U.S.?</p> <p>You will be required to provide proof of work authorization on your first day of work, is this a problem?</p> <p>Will you now or in the future require sponsorship for a visa?</p>	<p><i>Are you a citizen?</i></p> <p><i>Will you need a visa?</i></p> <p><i>Inquiry into applicant's lineage, ancestry, national origin, descent, parentage or nationality. Nationality of applicant's parents or spouse.</i></p> <p><i>Birthplace of applicant.</i></p> <p><i>Birthplace of applicant's parents, spouse or other close relatives.</i></p> <p><i>What is your native language?</i></p> <p><i>You're Hispanic, and so you speak Spanish?</i></p> <p><i>How did you learn to speak Spanish?</i></p> <p><i>When did you/your family come to this country?</i></p>

Subject	Lawful	Unlawful
Sex/Pregnancy/ Familial Status	None.	<p><i>Do you have children?</i></p> <p><i>Do they live with you?</i></p> <p><i>Are your children in day care?</i></p> <p><i>Who takes care of your children?</i></p> <p><i>Do you plan on having children soon?</i></p> <p><i>Are you pregnant?</i></p>
Marital Status	None.	<p><i>Do you wish to be addressed as Miss? Mrs.? Ms.?</i></p> <p><i>Are you married/single/divorced/separated?</i></p> <p><i>Do you have a boyfriend/girlfriend?</i></p> <p><i>Where does your spouse work?</i></p> <p><i>Do you have any roommates?</i></p>
Sexual Orientation	None.	<p><i>Who do you live with?</i></p> <p><i>Do you have any roommates?</i></p>
Age	If you are under 18 years of age, do you have written authorization to work ("working papers")?	<p><i>How old are you?</i></p> <p><i>What is your date of birth?</i></p> <p><i>What year did you graduate?</i></p> <p><i>What are the ages of your children, if any?</i></p> <p><i>Where were you when Kennedy was shot?</i></p> <p><i>Are you still able to perform strenuous work?</i></p>
Religion	None. (Questions regarding any	<i>Inquiry into applicant's religious denomination,</i>

Subject	Lawful	Unlawful
		<p><i>Can you lift 50 lbs.?</i></p> <p><i>Can you not do any of the functions that I have described due to a medical condition?</i></p> <p><i>Do you have good hearing?</i></p> <p>DO NOT FOLLOW UP ON APPLICANTS' STATEMENTS REGARDING DISABILITY ISSUES</p>
Criminal Record	Have you ever been convicted of a crime? (Criminal conviction does not necessarily disqualify you from employment).	<i>Have you ever been arrested?</i>
Outside Activities	What work-related skills, if any, have you gained from activities outside of work?	<p><i>List all clubs, societies and lodges to which you belong.</i></p> <p><i>What do you do in your free time?</i></p>
Photograph	None.	<i>Requirement or option that applicant affix a photograph to employment form at any time before hiring.</i>
Relatives	Name of applicant's relatives already employed by the company.	<i>Number, names, addresses and ages of applicant's spouse, children or relatives not employed by the company.</i>
Financial Information	Did you receive merit increases at your last job?	<p><i>Have your wages ever been garnished?</i></p> <p><i>Do you have good credit? (unless business necessity)</i></p> <p><i>Have you ever filed bankruptcy?</i></p>
Name	Is additional information relative to change of name, use of an assumed name or nickname	<i>Maiden name of a married woman.</i>

Subject	Lawful	Unlawful
	necessary to enable a check on your work record? If yes, explain.	<i>If you have ever worked under another name, state name and dates.</i>
Union Activity	None.	<i>Have you ever been a member of a union?</i> <i>What are your views on unions?</i>
Job Qualifications	<p>Inquiry into work experience or any other legitimate job qualification.</p> <p>Why are you considering changing jobs?</p> <p>Why did you leave your previous jobs?</p> <p>Were you ever fired or asked to resign?</p> <p>Can you explain the gap in your employment history?</p> <p>What were the circumstances surrounding any discipline you have received?</p>	<p><i>Inquiries directly related to job qualifications will almost never be unlawful – that is, if they are directly related to the job!</i></p> <p><i>Were you ever disciplined for poor attendance?</i></p> <p><i>How far do you commute to work?</i></p> <p><i>How will you get to work?</i></p>
Job Qualifications (cont'd.)	<p>This job requires that you be fluent in _____ (language), are you?</p> <p>This job requires that you work 9:00 a.m. to 6:00 p.m. Wednesday through Sunday, are you willing and able to work that schedule?</p> <p>Do you have reliable transportation to get to work? (Note, includes: Mom, walking, train, bike, carpool, etc.)</p>	

Subject	Lawful	<i>Unlawful</i>
	<p>This job requires travel:</p> <ul style="list-style-type: none">- can you be away from home for _____ days at a time?- are you able to rent a car?- obtain a credit card for use for company travel?- do you have a valid drivers' license? <p>Are you available for unanticipated overtime?</p> <p>What interests you in this kind of work?</p>	

Questions and Notes

**THESE MATERIALS ARE PROVIDED AS A SUMMARY ONLY, AND
SHOULD NOT BE USED AS A SUBSTITUTE FOR LEGAL ADVICE.**

MANAGER ACKNOWLEDGMENT

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I also acknowledge that I understand the Company's policy against harassment and discrimination, which includes a detailed Complaint procedure, and intend to abide by it.

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EMPLOYEE NAME (PRINT)

EMPLOYEE SIGNATURE

DATE